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UNITED PARCEL SERVICE, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

HEROES CLUB, INC., a California Corporation,

**Plaintiff,**

## Defendants.

Case No. 07-4422 JCS

**[PROPOSED] ORDER  
GRANTING DEFENDANT  
UNITED PARCEL SERVICE  
INC'S MOTION FOR  
JUDGMENT ON THE  
PLEADINGS**

1           Defendant United Parcel Service, Inc. ("UPS") has moved this Court pursuant to Federal  
2 Rule of Civil Procedure 12(c) to enter judgment for UPS as a matter of law. Following hearing  
3 on this matter, and after consideration of the papers on file in connection with this motion and in  
4 the file of this case, and for good cause shown, the Court finds as follows:

5           (1) Plaintiff's state law claims, except for a routine breach of contract claim, (*see*  
6 *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995)), are preempted by the Federal Aviation  
7 Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. §§ 14501(c)(1) and  
8 41713(b)(4);

9           (2) Plaintiff's surviving breach of contract claim, to the extent it accrued on or before  
10 January 27, 2006, is barred by the 18-month statute of limitations. *See* 49 U.S.C. §14705(b);  
11 *Emmert Indus. Corp. v. Artisan Assocs., Inc.*, 497 F.3d 982 (9th Cir. 2007). Plaintiff's surviving  
12 breach of contract claim is further barred because Plaintiff has failed to allege that it fulfilled  
13 contractual and statutory conditions precedent to recovery.

14           IT IS THEREFORE ORDERED that Defendant United Parcel Service, Inc.'s motion for  
15 judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) is GRANTED, and  
16 the action is dismissed with prejudice.

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18 Dated: \_\_\_\_\_, 2007

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Hon. Joseph C. Spero  
United States Magistrate Judge

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